



POLICE DEPARTMENT

December 28, 2022

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2021-24447
Sergeant Kit Yung	:	
Tax Registry No. 942737	:	
Manhattan Court Section	:	

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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Paul M. Gamble
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Megan Forbes, Esq.
Department Advocate's Office
One Police Plaza, Room 402
New York, NY 10038

For the Respondent: Marykate Acquisto & Matthew Schieffer, Esqs.
The Quinn Law Firm
399 Knollwood Road, Suite 220
White Plains, NY 10603

To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Said Sergeant Kit Yung, while off duty and assigned to the 5th Precinct, on or about September 26, 2021, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: Said Police Officer engaged in a physical altercation with an individual known to the Department.

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT

2. Said Sergeant Kit Yung, while off duty and assigned to the 5th Precinct, on or about September 26, 2021, wrongfully failed to make a timely notification to the Operations Unit after an off-duty incident.

P.G. 212-32, Page 1, Paragraphs 1, 2 & Note

PROHIBITED CONDUCT

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on November 1, 2022. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Police Officer Wai Naing and offered Complainant's hearsay statement as evidence. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, the Tribunal finds Respondent Guilty of the charged misconduct and recommends a penalty of 30 suspension days, 25 vacation days, one-year dismissal probation and cooperation with Department counseling.

ANALYSIS

On September 26, 2021, at about 0140 hours, Police Officer Wai Naing encountered Complainant (Respondent's wife) while inside the 109th Precinct. According to Naing, Complainant walked a little over one mile to the precinct from her home. She wore a T-shirt and jeans; the weather was cool outside (T. 17-18).

Once Complainant arrived at the precinct, Lieutenant Joseph Runfola interviewed her; his body-worn camera captured their interaction (Dept. Ex. 3). When Complainant first appears on the video, she is seated sideways in a chair with her hands clasped in her lap. Her head looks down, and her hair falls into her face. Her eyes are red, apparently swollen, and she periodically sniffles (*Id.* at 1:41:24).

When Lieutenant Runfola asks Complainant to tell him what happened, she states that she argued with her spouse (Respondent) and that he grabbed her wallet as she attempted to leave. Complainant clarified that Respondent's mother and father implored her not to go. As Lieutenant Runfola asks Complainant for details about the argument, she begins crying and states that Respondent was flirting with girls and that he always lies to her. When asked if Respondent pushed her during the altercation, Complainant shakes her head and states that it was as she attempted to leave their home that he pushed her, and then he took her wallet and mobile phone and threw them to the floor. Complainant asserts that Respondent's push caused her to fall to the floor. Complainant then left her home and walked to the precinct (*Id.* at 1:41:25-1:45:46).

Police Officer Naing pointed at Complainant's right arm and asked her how she got marks on her arm. Complainant raises her right sleeve, revealing two red marks on her upper arm. Complainant replies, "I'm not sure. Maybe his mom and his dad did that" (*Id.* at 1:45:48-1:46:41). Lieutenant Runfola then directed Naing to complete the interview (*Id.* at 1:46:41).

Naing interviewed Complainant for over one hour, captured on his body-worn camera, and prepared a Domestic Incident Report¹; Police Officer Ismil Hossain's body-worn camera

¹ The DIR states, "[Complainant] states she got into a verbal dispute with [Respondent] over him flirting with another female. [Complainant] further states she got her phone and wallet to leave when [Respondent] did push her causing [her] to fall. [Complainant] then states [Respondent] then threw [her] phone and wallet to the ground. [She] then left and walked to the 109 PCT. No injuries reported. No property damage reported."

also captured the interview (Dept. Exs. 1-A, 1-B, 2, 5). According to Naing, Complainant told him she had an argument with Respondent earlier in the evening over him supposedly flirting with another woman. He subsequently pushed her to the floor, took her cell phone and wallet, and threw them on the ground. Naing described Complainant's demeanor as "upset and crying" throughout the encounter. He noticed marks on her arms, which Complainant said she possibly got from Respondent (T. 15-16).

There came a time while Naing was trying to complete the report that he observed Complainant "shut down," becoming less forthcoming with her answers (T. 17). When Naing asked her to go through the incident a second time, she replied, "Again? I don't want to repeat" (Dept. Ex. 1A at 1:48:35). During her interview, Complainant slowly began to deny the allegations she had previously made, as she became more reserved. She later began shaking her head "no" in response to questions she had previously answered "yes" to when initially speaking with Lieutenant Runfolo (T. 25).

As captured by Naing's body-worn camera, Complainant is first seen sitting with her head down and her arms locked in front of her, blocking off the front of her body. She is crying as she states, "He is flirting with a girl. I asked him what happened; he always lies to me for ten years, so I argued with him again" (Dept. Ex. 1A at 1:43:20-1:43:35). While speaking with Naing, Complainant asks if Respondent will be arrested, stating, "His parents are gonna [sic] think it's my fault and turn against me" (*Id.* at 1:59:16-1:59:29).

After she sat in silence for over one hour with Naing, Complainant was moved into the break room of the 109th Precinct, where she continued to sit without speaking. Captain Jackson Cheng later entered the break room and began an interview with Complainant, asking her to explain the events of the evening again (Dept. Ex. 1B at 3:08:42-3:50:08). Captain Cheng

pointed to a bruise on Complainant's arm, as well as redness on her eye, and asked her if she wanted medical attention, to which she responded, "No" (*Id.* at 3:51:08-3:51:44).

Complainant again became reticent when asked to reiterate the timeline to Captain Cheng; when he asked her if it was true that Respondent pushed her, she responded, "Kind of." She then described how Respondent's parents tried to stop her from leaving, and Respondent pushed her, causing her to fall to the ground. According to Complainant, when she tried to get up to go again, Respondent grabbed her keys and phone from her hands (Dept. Ex. 1B at 3:52:00-3:56:30).

Later that day, investigators from Queens North Investigations interviewed Complainant. During that interview, Complainant stated that she told her family she planned on going to her mother's house once she decided to leave the home she shared with Respondent. When she told Respondent her plan, he stated he wanted her to stay, grabbed her belongings from her hands, and then pushed her (Dept. Ex. 4B at 4-6).

Respondent's Testimony

Respondent and Complainant have been married for ten years. The couple has two children. Complainant is a full-time caregiver and does not work outside the home. According to Respondent, she has limited English proficiency. Respondent's parents live with Complainant and their children (T. 30-31).

According to Respondent, on September 25, 2021, he and his wife celebrated their son's birthday at home. Shortly after midnight, Respondent left with "permission" from Complainant to hang out with a friend. He testified that he returned home 10-15 minutes later because Complainant had sent him a text message which accused him of being "a bad husband." Upon

returning home, Respondent found Complainant waiting for him in the living room. He explained that she was agitated and yelled about him flirting with girls and lying (T. 32-33).

Respondent testified that at the time of this confrontation, Complainant was drunk. He stated that he observed her drinking earlier in the day and that she was unsteady on her feet and “[not] making any sense.” According to Respondent, Complainant rose from a seated position, and, as she tried to walk towards Respondent, she slipped and fell. Respondent testified that he did not want her to leave the house because he was concerned for her safety. He claimed that he told her it was not safe, as it was after midnight, and that they would continue talking in the morning. Respondent then grabbed Complainant’s wallet and cell phone from a counter in the living room (T. 33-34).

Respondent explained that after Complainant fell, his parents came to help her up. Since she was unsteady, they grabbed her by her arms. Respondent indicated that Complainant did not want him near her and walked out of the house, and he did not prevent her from doing so. After her departure, Respondent’s parents became visibly upset, so he consoled them before looking for Complainant. He then went to his mother-in-law’s house, only to learn that Complainant was not there; he left her home and continued searching on his own (T. 34-36).

Respondent testified that he later received a call from his union delegate; he claimed that the delegate advised him, “If [he] was involved in a domestic incident, and there was a level where [he] should report it, [he] should physically walk into the 109th.” Respondent did not make a notification before receiving the call from his delegate because he did not think the dispute reached a level necessary for him to report it to a supervisor. Finally, Respondent denied pushing his wife (T. 36-37).

On cross-examination, Respondent conceded that he never told investigators that he believed his wife was intoxicated (T. 48, 51). He further acknowledged that he told investigators that he stood in his wife's path to prevent her from leaving their home (T. 49-50). Respondent also admitted that he never told investigators that his wife's parents attempted to help her get up (T. 50). Finally, he conceded that from the time his wife left their home, until he received a call from his delegate at approximately 0500 hours, he never made any notifications to this Department (T. 51-52).

In response to questioning from the Tribunal, Respondent admitted that he did not attempt to contact the 109th Precinct to seek their assistance in locating his wife, despite his belief that she was intoxicated, on foot, without either her mobile phone or wallet; he claimed it was his "duty as a husband" to locate her, "and not the duty of [his] coworkers" (T. 55-56).

Credibility

In a misconduct case involving allegations of domestic violence, the finder of fact must carefully consider the individual motivations of the parties to provide truthful information. When placed in proper context, the behaviors of the parties before and after the incident in question may also reveal evidence relevant to a credibility assessment. Finally, the degree to which competing narratives are logical and corroborated by independent evidence must be part of the credibility findings.

Based upon the totality of the record, I find that Complainant's hearsay statements, contained in Department Exhibits 1-A, 1-B, 2, 3, 4-A, 4-B, and 5, bear sufficient indicia of reliability upon which to base findings of fact. I make this finding mindful that she did not appear before the Tribunal and present herself for examination; nevertheless, her statements were logical and consistent with other credible evidence in the case. As outlined above, the timing of

her initial outcries, the circumstances under which she made her statements and the substance of those statements strongly support a finding that her statements are credible.

The Complainant's hearsay testimony, contained in the body-worn camera footage and the sworn interviews, was provided in close temporal proximity to the incident. After reviewing the video evidence, I find that Complainant's initial demeanor appears guarded and reluctant to speak about why she came to the precinct. I further find that walking from her home for one hour, in the middle of the night, to the 109th Precinct, then sitting with officers for three hours while barely speaking, is consistent with a person who was fearful of making a complaint in the recent aftermath of a domestic incident. I acknowledge that during her interview with Naing, Complainant appeared to vacillate from earlier assertions of fact she made; I further note that once Captain Cheng began interviewing her, Complainant became more forthcoming and consistent with her earliest statements. In the experience of this Tribunal, such behavior is consistent with an individual who has been a victim of domestic violence.

I further find the evidence that the interviewing officers noticed a bruise on her arm and redness to her eyes tends to corroborate her assertion that she and Respondent had a verbal altercation, during which she was upset, and that Respondent pushed her to the floor.

Complainant executed an attestation in the Domestic Incident Report, stating, "False statements made herein are punishable as a Class A misdemeanor, pursuant to section 210.45 of the Penal Law." She made this attestation close to the events they described when Complainant did not have a significant opportunity for reflection or an incentive to accuse Respondent falsely. On the contrary, the police report was made in the context of Respondent's abusive conduct; under these circumstances, Complainant had a greater incentive to remain silent out of fear rather than make an official police report documenting his violent act.

In contrast, Respondent's testimony before the Tribunal was permeated with self-interest. While any Respondent is interested in the outcome of the proceeding by the potential adverse consequences of a guilty finding, the Respondent's self-serving testimony and the selectivity of the evidence he presented in his defense made clear his incentive to advance an alternative narrative that lacked independent factual support.

For example, as part of his defense to the charge of engaging in a physical dispute with his wife, Respondent asserted that she slipped and fell to the floor because she was drunk. First, for her to have been drunk when he returned from his 10-15 minute trip with his friend, she would have been drunk when he left his home. His claim that he asked her permission to go out after midnight to meet a friend seems less plausible if she were drunk during that discussion.

Second, Respondent admitted at trial that he took his wife's wallet and mobile phone before she left their home. While Respondent's professed motivation for taking this action is dubious, it makes even less sense if his wife was drunk when she left. Finally, Respondent's glib assertion that the reason he did not attempt to enlist the assistance of his fellow police officers at the 109th Precinct in a search for his wife because it was his responsibility as a husband to find her, and not theirs, is illogical if Complainant was drunk at the time she left. Based upon the totality of the circumstances, I find Respondent's testimony contrived, self-serving, and unreliable.

I further find that Respondent tailored his alternative narrative to avoid responsibility for his wrongful actions; as such, it is evidence of consciousness of guilt.

Specification 1: Engaging in a Physical Altercation

I find the Department Advocate has met her burden of proof by a preponderance of the relevant, credible evidence that Respondent engaged in a physical altercation with Complainant on September 26, 2021.

As set forth above in my credibility analysis, I have credited Complainant's hearsay statements that Respondent pushed her to the ground as she was preparing to leave their home. I find her flight from her home, after midnight and without her wallet or mobile telephone, is evidence of her state of mind, that being a desire to find a safe place after an intimate partner was physically violent toward her, in her own home, and further corroboration of her statements that he had assaulted her.

I reject Respondent's proffered defense that Complainant fell because she slipped, allegedly because of drunkenness.

Based upon the foregoing, I find Respondent Guilty of Specification 1.

Specification 2: Failure to Report an Off-Duty Incident

I find that the Department Advocate has met her burden of proof by a preponderance of the credible, relevant evidence that Respondent failed to call a patrol supervisor to the scene of an off-duty incident on September 26, 2021.

Patrol Guide procedure 212-32 requires off-duty uniformed members of the service who are at the scene of an unusual police occurrence as a participant or a witness to remain at the scene and request the presence of the patrol supervisor in the precinct of occurrence. "Unusual police occurrence" includes "family disputes and other incidents of domestic violence in which the officer is either a participant or a witness" (P.G. 212-32). "If the incident occurred outside of

the City, the uniformed member of the service concerned will promptly notify the Operations Unit” (*Id.*).

I find the September 26, 2021, incident that occurred at Respondent’s home was a domestic violence incident: the evidence establishes that he pushed Complainant to the ground during a verbal altercation. I further find that Respondent’s assertion that he did not believe the incident rose to the “level necessary” to report it was belied by his knowledge that Complainant had neither her wallet, nor her mobile telephone, because he took them from her. When he became aware that his delegate must have had information regarding the incident, which transpired in the privacy of Respondent’s home, Respondent still chose to remain silent instead of calling for a supervisor.

Based upon the foregoing, I find Respondent Guilty of Specification 2.

PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department’s Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent’s employment history also was examined (*See* 38 RCNY § 15-07). Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent, who was appointed to the Department on July 10, 2006, has been found Guilty of wrongfully engaging in a physical altercation with the Complainant, his wife, and failing to notify the Patrol Supervisor of his involvement in an off-duty incident. The Department has recommended that Respondent be suspended for 30 days without pay, that he forfeit one penalty day, to run concurrent with his period of suspension, be placed on one-year

dismissal probation, and cooperate with 24-week counseling. For the reasons set forth below, I find that penalty recommendation to be inadequate.

The presumptive penalty for a physical act of domestic violence is 30 suspension days, dismissal probation, and counseling; the aggravated penalty is termination. In addition to the evidence of a domestic assault that came from Complainant's statements, Respondent admitted that he did not want Complainant to leave their home after engaging in a verbal dispute with her. Based on the credible evidence, the Department established Respondent pushed Complainant down to prevent her from leaving their home.

The credible evidence further established that Respondent took Complainant's mobile telephone from her and threw it to the floor before she left their home; confiscating a victim's phone is an aggravating circumstance for which the presumptive additional penalty is 15 days.

The presumptive additional penalty for failing to make a notification is five penalty days.

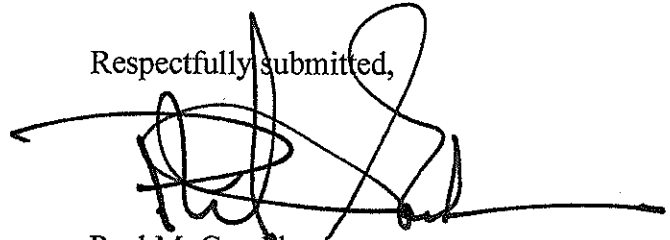
I also find the presence of several other aggravating factors not specified under the Disciplinary Guidelines for domestic violence incidents but set forth in the general provisions concerning aggravating and mitigating factors.

First, Respondent's rank as a supervisor is aggravating. Because of his training and experience in this Department, it has a right to expect an even higher standard of personal conduct than a Member of Service of lesser rank. Second, I found Respondent's testimony before the Tribunal to lack candor. Based upon the aggregate impact of these aggravating factors, I recommend a further additional penalty of five vacation days.

I, therefore, recommend that Respondent be suspended for thirty (30) days without pay, forfeit an additional twenty-five (25) vacation days, be required to cooperate with counseling through the 24-week OASAS program, and that he be DISMISSED from the New York City

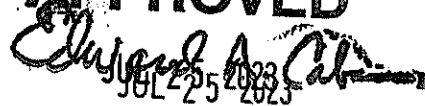
Police Department, but that his dismissal be held in abeyance for a period of one (1) year pursuant to Section 14-115(d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to be 'Paul M. Gamble', written over the words 'Respectfully submitted,'.

Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED

A handwritten signature in black ink, appearing to be 'Edward A. Caban', written over the word 'APPROVED'.

EDWARD A. CABAN
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
SERGEANT KIT YUNG
TAX REGISTRY NO. 942737
DISCIPLINARY CASE NO. 2021-24447

Respondent was appointed to the Department on July 10, 2006. On his three most recent annual performance evaluations, he received 4.0 overall ratings of “Highly Competent” for 2019, 2020, and 2021. He has been awarded two medals for Excellent Police Duty.

Respondent has no formal disciplinary history. In connection with the instant matter, he was placed on Level 1 Discipline Monitoring in October 2021; monitoring remains ongoing.

For your consideration.

Paul M. Gamble
Assistant Deputy Commissioner Trials